

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANNA REYES, *et al.*

Plaintiffs,

v.

COUNTY OF KERN,

Defendant.

Case No. 1:21-cv-01340-CDB

ORDER GRANTING MOTIONS TO  
APPOINT GUARDIAN *AD LITEM* FOR  
L.H.B. AND P.H.B.

(Docs. 28, 29)

On September 7, 2021, Defendant County of Kern removed this action filed by Plaintiffs in Kern County Superior Court. (Doc. 1). Plaintiffs filed motions to appoint guardian *ad litem* for L.H.B. and P.H.B. on February 2, 2023. (Docs. 22-23). The Court denied Plaintiffs' motions to appoint guardian *ad litem* for L.H.B. and P.H.B. without prejudice as the motions did not comply with Local Rule 202 and the motions and supporting declarations did not establish that proposed guardian had no interests adverse to the minors she sought to represent. (Doc. 26).

Pending before the Court is Plaintiffs renewed motions to appoint guardian *ad litem* for L.H.B. and P.H.B. (Docs. 28-29).

LEGAL STANDARD

Pursuant to Rule 17 of the Federal Rules of Civil Procedure, a representative of a minor or incompetent person may sue or defend on the minor or incompetent person's behalf. Fed. R. Civ. P. 17(c). In addition, a court "must appoint a guardian *ad litem* - or issue another appropriate

order - to protect a minor or incompetent person who is unrepresented in an action.” *Id.* The capacity of an individual to sue is determined “by the law of the individual’s domicile.” Fed. R. Civ. P. 17(b)(1).

Under California law, an individual under the age of 18 is a minor, and a minor may bring suit if a guardian conducts the proceedings. Cal. Fam. Code §§ 6502, 6601. The Court may appoint a guardian *ad litem* to represent the minor’s interests. Cal. Code Civ. P. § 372(a). To evaluate whether to appoint a particular guardian *ad litem*, the Court must consider whether the minor and the guardian have divergent interests. Cal. Code Civ. P. § 372(b)(1).

The appointment of the guardian *ad litem* is more than a mere formality. *United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cty., State of Wash.*, 795 F.2d 796, 805 (9th Cir. 1986). A Court shall take whatever measures it deems appropriate to protect the interests of the individual during the litigation. *See id.* (noting, “[a] guardian *ad litem* is authorized to act on behalf of his ward and may make all appropriate decisions in the course of specific litigation.”). The guardian need not possess any special qualifications, but he must “be truly dedicated to the best interests of the person on whose behalf he seeks to litigate.” *AT&T Mobility, LLC v. Yeager*, 143 F. Supp.3d 1042, 1054 (E.D. Cal. 2015) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990)). This means that the guardian cannot face an impermissible conflict of interest with the ward, and courts consider the candidate’s “experience, objectivity and expertise” or previous relationship with the ward. *Id.* (citations omitted).

Further, the Local Rules of the Eastern District of California provide:

(a) Appointment of Representative or Guardian. Upon commencement of an action or upon initial appearance in defense of an action by or on behalf of a minor or incompetent person, the attorney representing the minor or incompetent person shall present (1) appropriate evidence of the appointment of a representative for the minor or incompetent person under state law or (2) a motion for the appointment of a guardian *ad litem* by the Court, or (3) a showing satisfactory to the Court that no such appointment is necessary to ensure adequate representation of the minor or incompetent person. *See* Fed. R. Civ. P. 17(c);

....

(c) Disclosure of Attorney’s Interest. When the minor or incompetent is represented by an attorney, it shall be disclosed to the Court by whom and the terms under which

the attorney was employed; whether the attorney became involved in the application at the instance of the party against whom the causes of action are asserted, directly or indirectly; whether the attorney stands in any relationship to that party; and whether the attorney has received or expects to receive any compensation, from whom, and the amount. (E.D. Cal. Local Rule 202).

The decision to appoint a guardian *ad litem* “must normally be left to the sound discretion of the trial court.” *30.64 Acres of Land*, 795 F.2d at 804. Fit parents are presumed to act in the best interests of their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000). However, “if the parent has an actual or potential conflict of interest with [their] child, the parent has no right to control or influence the child’s litigation.” *Molesky for J.M. v. Carillo*, No. 1:22-cv-1567-ADA-CDB, 2022 WL 17584396, \*1 (E.D. Cal. Dec. 12, 2022) (quoting *Williams v. Super. Ct. of San Diego*, 147 Cal. App.4th 36, 50 (2007)).

### DISCUSSION

Plaintiffs’ motions were filed on February 13, 2023, and state that Plaintiffs L.H.B. and P.H.B. are five and four years old, respectively. (Docs. 28, 29). The proposed guardian *ad litem*, Christina Hungerford, declares she is competent, responsible, able and willing to serve as the guardian *ad litem*, and possess no adverse interests to L.H.B. and P.H.B. (Docs. 28-1, 29-1). As L.H.B. and P.H.B.’s parent, Christina Hungerford is qualified to understand and protect the minors’ rights and attests she can “appropriately serve and protect [their] best interests in this action.” *Id.* Separately, the motions meet E.D. Cal. Local Rule 202(c)’s in disclosing the attorneys for Plaintiffs’ interest. (Docs. 28, 29).

### CONCLUSION AND ORDER

For the foregoing reasons, it is HEREBY ORDERED:

1. Plaintiffs’ motions to appoint Christina Hungerford as guardian *ad litem* for L.H.B. and P.H.B. (Docs. 28, 29) are GRANTED; and

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- 1           2.       Christina Hungerford is appointed to act as guardian *ad litem* for Plaintiffs L.H.B.  
2                   and P.H.B and is authorized to prosecute the claims on their behalf.

3 IT IS SO ORDERED.

4       Dated: February 14, 2023

  
UNITED STATES MAGISTRATE JUDGE